

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 2794 (S/S) of 2001
(Old No. 8515 of 1993)

Aadesh Kumar S/o Mahaveer Singh ----- Petitioner
Vs.

State of U.P.
And another --- Respondents.

AND

Writ Petition NO. 5009 (S/S) 2001

Smt. Radha Devi W/o Jagdish Saran ----- Petitioner

Vs.

State of U.P. --- Respondents.
And another

Hon'ble P.C.Verma. J.

Heard Sri P.M.N. Singh, learned counsel for the petitioners and learned Standing Counsel for the respondents.

These writ petition have been filed by petitioners to quash the order dtd 04.11.1992 by which the petitioners were put as class IV employees. The petitioners were appointed on temporary basis with effect from 02.11.1982 and 20.08.1982 respectively under the provisions of Dying-in-Harness Rules against class-IV posts and continuously they were being paid salary on that basis. They were appointed in 1982 and the order has been passed on the ground of G.O. dated 16.05.1981 which provides that the initial appointment shall be made on the fixed pay under the Dying-in-Harness Rules. The Dying-in-Harness Rules have been enforced on the appointments of the dependants of the Govt. servants who died during their services. Appointment made under the aforesaid Rule is regular in nature as it is made according to the aforesaid Rules framed under proviso of Article 309 of the Constitutions of India as held by the Divisions Bench of Allahabad High Court in Civil Misc. W.P. No. 39127 of 1994 Ravi Karan Singh Vs. State of U.P. and others reported in 1999 (2) Education and Service Cases page- 972.

Since the petitioners were initially appointed on the pay-scale under the Dying-in-Harness Rules, they could not have been put on the fixed pay. The G.O. dated 16.05.1981 is not applicable in the case

of the petitioners. As services of the petitioners have been regularised and they were regular employees, therefore, the Government order dated 16.05.1981 is not attracted.

Thus the orders impugned cannot be sustained in eye of law. Accordingly, writ of mandamus quashing the impugned order dated 04.11.1992 is issued. The petitioners shall be treated to be regular appointment for class-IV employees and they shall be paid salary regularly every month. The arrears of salary shall be paid, after necessary deduction like Provident Fund within two months from the date of production of certified copy of this order. No order as to costs.

(P.C. Verma, J.)

September 29, 2003:
NCM: